

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2488 OF 2006

Shri.Rajesh Lalji Singh	.. Petitioner
V/s	
Shri.A.N.Roy & Ors.	.. Respondents

Mr.U.N.Tripathi for the Petitioner.
Mr.A.R.Patil, APP for Respondents.

**CORAM : DR.S.RADHAKRISHNAN, &
SMT.R.S.DALVI, JJ.**

DATE : 5th September, 2007.

P.C.:

1. By this petition, the petitioner is challenging the Detention Order dated 7.9.2006 passed by the Commissioner of Police, Brihanmumbai under the provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of the public order.

2. Mr.Tripathi, the learned Counsel for the detenu has urged only one ground by which he has contended that the aforesaid Detention Order stands clearly vitiated in the sence there are patent variances in the grounds of detention and the witnesses statements i.e.to say that the learned Counsel for the Petitioner has submitted that the Detaining Authority has not applied its mind at all in view of the said patent variances in the grounds of detention and the material based on which the Detention Order has been passed.

3. Mr.Tripathi, the learned Counsel for the Petitioner has pointed out that there are five serious variances, which read as under:-

Firstly, the statement of witness 'A' page 339 of the compilation says that the incident had occurred in the 1st week of July,2006, whereas in grounds of detention in paragraph 5(b) it is stated as the last week of July,2006.

Secondly, at page No.339 of the compilation, it is stated that Kundan Singh took out chopper from his waist, whereas at page 43 of the grounds of detention it is stated that the associate Rakesh Singh took out a chopper from his waist.

Thirdly, in the grounds of detention it is stated by witness 'A' that Rakesh Singh threatened witness in abusive language and took out Rs.450/- from his shirt pocket, whereas witness 'A' at page No.339 says that Kundanlal Singh threatened and took out Rs.450/- from witnesses shirt pocket.

Fourthly, in the statement at page 341, it is stated "while going Rakesh Singh threatened saying..... Whereas in the grounds of detention at page 43, it is stated that "while going you i.e. Kundan Singh threatened saying.....".

Fifthly, at page No.349 i.e. witness B's statement says, "Rakesh Singh threw the glass jar down and broke the same" whereas at page 45 in the grounds of detention it is stated that "Your associate Rakesh Singh hammered the glass jar in 'Hathoda' and broke it."

4. The learned Counsel for the Petitioner has submitted that in view of the serious variances between the grounds of detention and the material documentary evidence like the Camera statements of witnesses A and B clearly shows the non-application of mind on the part of the Detaining Authority. Therefore, he submitted, it is

obvious that the Detaining Authority had never gone through and considered the material documents in the compilation, and had passed the order very casually and had formulated the grounds in a casual and mechanical manner. Over and above, the learned Counsel has further submitted that, in view of such variances the detenu's right to make an effective representation under Article 22(5) of the Constitution of India also stands deprived. Mr. Tripathi, the learned Counsel for the detenu also brought to our notice that the Detaining Authority not only did not apply mind while passing the Detention Order, but even while filing the affidavit in reply the Commissioner of Police in his affidavit dated 12.02.2007 has only admitted to the first variance, whereas with regard to the 2nd, 3rd, 4th and 5th variances there is merely denial, and has contended that there are no variances.

5. The learned APP Mr. Mhaispurkar appearing on behalf of the State, could not controvert the aforesaid contentions of the learned Counsel for the Petitioner as the record clearly speaks for itself.

6. We have perused the grounds of detention as well as the statements of witnesses A & B. It is explicitly clear that all the aforesaid five variances are found, and if that be so, it is clear case of non-application of mind of the Detaining Authority. Over and above, the Detaining Authority, being the Commissioner of Police,

Brihanmumbai, has not even bothered to verify even while filing the affidavit. While filing the affidavit there is total non-application of mind.

7. Under the aforesaid facts and circumstances, we are inclined to quash and set aside the impugned order of detention dated 7.9.2006. Accordingly, the Rule is made absolute in terms of prayer clause (c), and the detenu is directed to be released forthwith, if he is not required to be detained in any other case.

(SMT.R.S.DALVI, J.)

(DR.S.RADHAKRISHNAN, J.)